

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

STEVE STAPLETON	§	
VS.	§	CIVIL ACTION NO. 1:11-CV-340
JOHN B. FOX, WARDEN	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION

Petitioner, Steve Stapleton, an inmate currently confined at the U.S. Penitentiary in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this petition for writ of habeas corpus be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds the objections lacking in merit. As the Magistrate Judge correctly concluded “a claim of actual innocence of a career offender enhancement is not a claim of actual innocence of the crime of conviction and, thus, does not warrant review under § 2241.” *Campbell v. Maye*, No. 10-50955, 2011 WL 2342690, at *1 (5th Cir. June 14, 2011) (not selected for publication) (citing *Kinder*, 222 F.3d at 213-214). The Fifth Circuit has consistently relied on *Kinder v. Purdy*, 222 F.3d 209, 213-14 (5th Cir. 2000), to disallow such claims under the savings clause.

ORDER

Accordingly, the objections of plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **1** day of **November, 2011**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge